

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
07-CR-19-A

MARTELL JORDAN,

Defendant.

Defendant Martell Jordan has filed a *pro se* motion for resentencing pursuant to 18 U.S.C. § 3582 and the First Step Act of 2018, Pub. L. N. 115-391, § 404, 132 Stat. 5194 (Dec. 21, 2018). Defendant Jordan was convicted of Count 1 of a January 22, 2008 Superseding Indictment (Dkt. No. 206) for a drug conspiracy violating 21 U.S.C. § 846 that involved five kilograms or more of powder cocaine, among other Counts. See Dkt. No. 270; Dkt. No. 377. Consequently, the conviction on Count 1 subjected the defendant to the statutory penalty of ten years to life, 21 U.S.C. § 841(b)(1)(A), without any consideration of 50 grams or more of cocaine base that was included in his conviction of Count 1. *Id.* Suffice it to say this conviction is not a “violation of a federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010, . . . that was committed before August 3, 2010,” and it is therefore not a “covered offense” for which a sentencing reduction may be awarded. See *e.g.*, *United States v. Westbrook*, 2019 WL 3991466 (Mem.) (4th Cir. Aug. 23, 2019) (affirming denial of First Step Act motion for resentencing where defendant was convicted of conspiracy with intent to distribute five kilograms or more

of cocaine and 50 grams or more of cocaine base), *aff'g* 2019 WL 1542571 (D.S.C. April 9, 2019); *but see United States v. Medina*, No. 3:05-cv-58, 2019 WL 3766392 (D. Conn. Aug. 8, 2019). Because the Court finds the defendant is ineligible for relief under the First Step Act, his motion for resentencing (Dkt. Nos., 486, 491, 493) is denied.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: October 18, 2019